IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28195 of 2007(F)

PETITIONER:

YOUSUF,S/O. HYDRUMAN HAJI,
THOMMANVALAPIL HOUSE,4TH STONE,
MANGAD PO,KATTAPURAM, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS THIRUVANANTHAPURAM.

2. THE WADAKKANCHERY GRAMA PANCHAYATH REP. BY ITS SECRETARY, WADAKKANCHERY P.O. THRISSUR DISTRICT.

3. THE STATE OF KERALA, REP. BY THE SECRETARY TO THE GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM.

R3 BY ADV. SRI. K.J. MOHAMMED ANZAR, SR. GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28195 OF 2007

Dated this the 24th day of September, 2007

JUDGMENT

Under challenge in this Writ Petition is Ext.P5 order of the Tribunal for Local Self Government Institutions whereby the Tribunal found that Ext.P3 order, which was impugned before the Tribunal, was not appealable before the Tribunal in terms of Section 276.

Heard the submissions of Mr.G.Sreekumar(Chelur), counsel for the petitioner and Sri.K.J.Mohammed Anzar, learned Government Pleader who has taken notice on behalf of 3rd respondent. In the nature of the order which I propose to pass, it is not necessary that the Panchayat is issued with notice. There is certainly some merit in the submission of Mr.Sreekumar that the nature of encroachment referred to in Ext.P3 is the construction of a bridge over the Puramboke thodu in question and therefore Ext.P6 order subsequently passed by the Panchayat pursuant to Ext.P3 and Ext.P3 itself are to be conjointly read. If so read, it will have to be seen that the order has been passed under Section 235(w). But, at the same time, since it is seen that the order which was impugned in the appeal before the Tribunal was only Ext.P3 which is not ex facie an the order under Section 235(w), I find it difficult to interfere with Ext.P5 within the contours of this Court's jurisdiction

under Article 227. I relegate the petitioner to his appellate remedy before the Panchayat Committee. The Panchayat Committee will consider the appeal to be filed by the petitioner within two weeks of its receiving copy of this judgment in the light of the findings/observations entered by the Tribunal in Ext.P5 regarding the legality of Ext.P3. An early decision shall be taken by the Panchayat on the appeal. Till such time as the appeal is filed and disposed of, the Panchayat will not implement either Ext.P3 or Ext.P6. If the appeal is filed within two weeks from today, the Panchayat Committee will entertain the appeal as one filed on time notwithstanding the apparent delay.

PIUS C. KURIAKOSE, JUDGE

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